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ILLINOIS COMMERCE COMMISSION

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

ORIGINAL

Sage Telecom, Inc.

Petition for Arbitration of an
Interconnection Agreement with
Illinois Bell Telephone Company d/b/a
SBC Illinois under Section 252(b) of the
Telecommunications Act of 1996

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ICC Docket No.

03-0314

PETITION FOR ARBITRATION

Negotiation Request:

135th Day:

160th Day:

9 Months After Request:

November 30, 2002 (by stipulation)

April 14, 2003 (by stipulation)

May 9, 2003 (by stipulation)

August 30, 2002 (by stipulation)

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Dated: May 8, 2003

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**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

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PETITION FOR ARBITRATION

Sage Telecom, Inc. ("Sage") files its Petition for Arbitration of an interconnection agreement with Illinois Bell Telephone Company d/b/a SBC Illinois ("SBC") under Section 252(b) of the Telecommunications Act of 1996 ("Petition") and respectfully shows:

SUMMARY

1. Sage respectfully requests adoption of its proposed contract language for the disputed issues that it outlines in this Petition. Through negotiations, the parties were able to narrow the disputes to approximately sixteen issues. Of those sixteen issues, the last eight, Issues 9-16, are issues that may be easily settled, pending a final response from SBC.

2. Below is a summary of the disputed issues:

Issue 1: This issue addresses incollect charges, which are charges from collect, calling card, and third party calls that SBC (or its affiliates) want to assess on Sage's local customers. Sage's proposed contract language places Sage in the role of a billing and collection agent only. Sage will make a good faith effort to bill and collect SBC's incollect charges for a 3 cent per message fee, but should not be financially responsible for SBC's uncollectible incollect charges. SBC, on the other hand, wants to make Sage financially responsible for all of SBC's incollect charges when the end user fails to pay the charges. While seemingly arcane, this issue has a huge potential financial impact on Sage -- in the millions of dollars per

year. Sage respectfully urges the Commission to approve its proposed contract language, which relies on language approved by the Michigan, Wisconsin, and Texas commissions and a recent arbitration award from the Texas commission.

- Issue 2:** This issue addresses the scope of SBC's obligations to perform combinations of unbundled network elements ("UNEs"). Sage proposes the language that the Michigan commission approved last year, while SBC is relying on its generic 13-state contract language. Sage respectfully urges the Commission to approve Sage's proposed contract language, since it appropriately captures SBC's obligations. Sage also notes that the Commission will likely address the combinations issue in detail in the upcoming arbitration between AT&T and SBC, which was filed last month.
- Issue 3:** For this issue, Sage proposes using the standard change in law provisions to implement any changes in SBC's legal obligations to provide combinations, while SBC wants immediate implementation of the change. Sage respectfully requests adoption of its proposed language. If the change in law provisions are appropriate for other changes in legal obligations (which they are), then they are appropriate for changes in SBC's obligations to provide combinations.
- Issue 4:** This issue is the same as Issue 3, except applied to changes in SBC's legal obligations regarding performance measurements and remedies. Sage respectfully requests adoption of its contract language, which relies on the standard change in law provisions to implement any changes in SBC's legal obligations regarding performance measurements and remedies.
- Issue 5:** This issue addresses SBC's proposal to classify all Enhanced Extended Links ("EELs") as new combinations and restrict access to EELs beyond any restrictions outlined in applicable state and federal decisions. In contrast, Sage's proposed language requires the parties to conform with applicable state and federal decisions on EELs. Sage respectfully requests adoption of its language.
- Issue 6:** This issue addresses the proper scope of trunk rearrangement charges. Sage's proposed contract language limits the charges to the forward-looking charges incurred by SBC. SBC's proposed language, on the other hand, arguably allows SBC to double-recover customized routing costs that are recovered in other charges. Sage respectfully requests adoption of its language. This is another issue that the Commission will likely resolve in the arbitration between AT&T and SBC.
- Issue 7:** This issue addresses Sage's proposal to ensure that SBC does not assess a charge for Operator Services or Directory Assistance ("OS/DA") branding until the Commission approves the charge. Sage respectfully requests

adoption of its language, because SBC should not be allowed to assess a charge without prior Commission approval.

Issue 8: This issue addresses SBC's proposal to require Sage to submit a Bona Fide Request ("BFR") for *existing* combinations that SBC is currently providing. Sage respectfully requests deletion of SBC's proposed language. If SBC is already providing the combination, Sage should be able to order the combination using the standard ordering processes for UNEs and combinations of UNEs.

Issues 9-16: Sage is hopeful that the parties can resolve these issues, as SBC was going to respond to specific proposals from Sage on these eight issues. The issues address internally consistent terms in the reciprocal compensation attachment (Issue 9), clarification that the promotional rates from SBC's merger conditions apply for the duration of the contract (Issue 10), clarification that "as is" conversions are only subject to a service order charge (Issue 11), Sage's proposal to include language on the resolution of errors for listings in SBC's OS/DA databases (Issue 12), Sage's proposal to maintain SBC's liability for willful, intentional, or deliberate invasions of privacy or infringements of confidentiality (Issue 13), Sage's proposal to credit Sage for trouble isolation costs charged to Sage if the parties ultimately discover that the trouble resided on SBC's network (Issue 14), Sage's proposal to include contract language that memorializes SBC's obligation to provide access to unbundled local switching with unbundled shared transport for local and intraLATA traffic (Issue 15), and Sage's proposal to delete OS/DA language that is specific to SBC and AT&T's relationship (Issue 16). However, to preserve its legal rights, Sage is including these issues in this Petition.

PARTIES

3. Sage is a corporation duly authorized to do business in the State of Illinois. Sage has its principal offices at 805 Central Expressway South, Suite 100, Allen, Texas 75013-2789, telephone number (214) 495-4700, and facsimile number (214) 495-4795.

4. Sage is a telecommunications carrier authorized to provide competitive local exchange and interexchange telecommunications services within Illinois. *See Application for a Certificate of Local and Interexchange Authority to Operate as a Facilities Based Carrier and/or Reseller of Telecommunications Services in the State of*

Illinois, Docket No. 01-0508, Order (October 26, 2001) (granting Certificate of Service Authority).

5. Once an interconnection agreement is in place between the parties, Sage plans to offer telecommunications services to residential and small business customers in SBC's service area in Illinois, with a particular focus on rural and suburban residential customers. Sage relies on SBC's unbundled network element platform ("UNE-P") to provide many of these services.

6. Sage hereby designates the following persons to receive service on its behalf:

Gary P. Nuttall
VP, Chief Technical Officer
Sage Telecom, Inc.
805 Central Expressway South
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Allen, Texas 75013-2789
(214) 495-4700
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kmudge@reglaw.com

Mr. Wakefield and Ms. Mudge can be reached at the same address through a single filing.

7. SBC is a corporation duly authorized to do business in the State of Illinois. SBC has offices at 225 West Randolph Street, Chicago, Illinois 60606. SBC's designated representative for contract issues is as follows:

Ronald Hill
Lead Negotiator
SBC - Industry Markets
208 South Akard
One Bell Plaza, Room 503.09
Dallas, TX 75202
Phone: (214) 858-0761
Fax: (214) 858-1245

8. SBC is an incumbent local exchange carrier ("ILEC"), as defined by Sections 251 and 252 of the Telecommunications Act of 1996 ("Act").

9. Undersigned counsel for Sage respectfully request special leave under Title 83, Section 200.90(a) of the Illinois Administrative Code to represent Sage in this proceeding. Counsel for Sage are licensed to practice law in Texas. The Public Utility Commission of Texas ("PUCT") allows attorneys licensed to practice law in Illinois to represent parties at the PUCT. *See* PUCT Procedural Rule 22.101, available electronically at <http://www.puc.state.tx.us/rules/procrules/pr-f/22.101/22.101.pdf> (only requiring a party to designate an authorized representative and not requiring a party to have counsel licensed in Texas (or, indeed, any counsel at all)). Furthermore, counsels' request for special leave to participate in this proceeding furthers the interests of a complete factual record, fairness, expedition, convenience, and cost-effectiveness as outlined in Title 83, Section 200.25 of the Illinois Administrative Code. Specifically, Sage is a moderately sized competitive local exchange carrier ("CLEC") (although growing) that provides service primarily to rural and suburban residential customers. Sage's headquarters is in Texas, although Sage is very interested in providing telecommunications choices to Illinois customers. Consequently, Sage's participation in this arbitration through its national counsel will allow Sage to reasonably participate in this proceeding, thus promoting the interests of fairness, convenience, and cost-effectiveness.

10. Sage agrees to accept service of documents by electronic means as provided for in Title 83, Section 200.1050 of the Illinois Administrative Code.

JURISDICTION

11. The Commission has jurisdiction to arbitrate this Petition under Section 252(b) of the Act. Furthermore, the Commission has additional state law authority under the Public Utilities Act ("PUA"). *See, e.g.*, 220 ILCS 5/13-801.

12. By stipulation, the parties agree that the request for negotiations under Sections 251 and 252 of the Act occurred on November 30, 2002. *See* Exhibit A (negotiations letter). Therefore, the 135th day is April 14, 2003, the 160th day is May 9, 2003, and August 30, 2003 is nine months after the request for negotiations.

RESOLVED AND UNRESOLVED ISSUES

13. The parties resolved many issues, although several issues remain unresolved. Sage is attaching as Exhibits B and C issues logs that show the issues, resolved and unresolved, that were addressed in the negotiations.

14. The unresolved issues are as follows:

15. **Issue 1: What obligations do the parties have for Incollect charges, which are associated with certain SBC-provided or other third party-provided calls, such as collect calls, calling card calls, and third party calls, that are not originated by a Sage customer, but rather are accepted by a Sage customer?**

16. **Sage's Position:** Sage should have the obligation to be a billing and collection agent only, which should include an obligation to make good faith efforts to bill and collect the incollect ("Incollect") charges, but should not bear responsibility to the other company for uncollectible Incollect charges. Sage, as it has in other states in which it operates with SBC, is willing to implement, and actually has implemented, existing business practices and procedures that Sage and SBC currently use in Texas. These

obligations include billing and collection of SBC-rated and provided Incollect charges; remitting collected monies to SBC; tracking amounts billed and collected; at SBC's request, initiating orders to block Incollect calls for Incollect amounts in arrears; and using electronic settlement processes instituted by SBC for disputed and unbillable Incollect charges.

17. Before discussing its rationale and contract language, Sage will outline a common fact scenario to illustrate the issue in dispute. Joan Q. Public selects Sage as her local carrier. Ms. Public receives a collect toll call from a long lost cousin who is in prison.¹ She accepts the toll call and incurs \$30 in charges for a one hour call.² The collect call is an incoming collect call that is not originated by Sage's end user, thus use of the term "Incollects." At the time the call is made and accepted, Sage has no knowledge of the call. In order to collect the charges associated with the Incollect call, SBC sends daily usage feed records ("DUF") to Sage which includes the number of minutes and the SBC charges associated with the call, so that Sage can bill Ms. Public for the call. (Sage receives a nominal billing fee, generally around 3 cents per call.) Sage prepares a separate invoice for Incollects to bill Ms. Public. Ms. Public either pays the invoice to Sage and Sage remits those directly to SBC, or Ms. Public does not pay the charges. The

¹ This scenario – Incollect calls originating from a prison – represents a significant percentage of the Incollect calls. The Incollect call is provided via a payphone, which is typically owned by an SBC-payphone affiliate. The collect call service itself is provided by SBC (or its affiliates). The rates that apply to those calls are set in SBC's tariffs. The other typical, but less significant, scenario is where Joan Q. Public's son needs to call his mother, but does not have any money. He uses a payphone, places a collect call to his house; Ms. Public accepts the call; and her son asks her to pick him up. In this instance, the payphone may or may not be owned by SBC, and the collect call service may be provided by SBC or a third party. However, for purposes of Incollects, the charges for the calls are rated by SBC, as SBC will have a billing agreement with the third party. But, most importantly, in each instance, Sage has no authority or activity in the placement or provision of the collect call service, and has no authority over the rates that are charged to Ms. Public for accepting either collect call service.

² Sage is not aware of the rates that SBC will charge for this Incollect call. The number used here is an example, but may not be illustrative of the actual charges for the service found in the SBC tariffs.

key issue in dispute is whether Sage's obligations are limited to making a good faith effort to bill and collect SBC's Incollect charges as a billing and collection agent, or whether Sage must reimburse SBC for all Incollect charges, including those that are uncollectible (and, thus become financially responsible for an SBC-provided collect call service).

18. Sage respectfully urges the Commission to conclude that for Incollect calls, Sage's obligations are limited to that of a billing and collection agent -- *i.e.*, making a good faith effort to bill and collect SBC's charges. While SBC will likely raise many arcane issues associated with Incollects in its response and testimony, the policy underpinnings of Sage's proposed approach are simple. As the local carrier, Sage: (1) does not provide the collect call service; (2) does not have any authority over the rates SBC charges for the collect call service; (3) only learns that a call was placed or accepted via the SBC-provided and rated DUF record; (4) invoices its customers based on the SBC-provided and rated DUF record; and (5) receives no revenues from the Incollect calls beyond the nominal billing and collection fee of \$0.03 per message. The originating party, which is generally SBC or its affiliates, provides the collect call service; tariffs and sets the rates for the collect call services; and receives the Incollect revenues. Therefore, the originating party, SBC, should take responsibility for uncollectible Incollect charges.³ Going back to the example in the preceding paragraph, SBC (and its affiliates) has the

³ SBC's proposed remedy for uncollectible Incollect charges is to instruct Sage to place a block on the Sage end-use customer's account to be able to accept any collect calls. Once Sage is instructed to place a block, Sage places an order back to SBC to implement the block (as Sage is a UNE-P provider and SBC, as the underlying carrier, technically implements the block). This arrangement is consistent with the business practice that Sage and SBC have in place today and that was specifically authorized by the Texas commission.

contract with the prison, is receiving the revenue (\$30) for the collect call between Ms. Public and her cousin, and should take responsibility for uncollectible Incollect charges.

19. To recognize Sage's billing and collection role, Sage proposed the following contract language for Article XXVII, Section 27.16.3:

Incollects: For messages that originate from a number other than the billing number and that are billable to CLEC customers (Incollects), SBC will provide the rated messages it receives from the CMDS1 network or which SBC records (non-ICS) to CLEC for billing to CLEC's end users. SBC will transmit such data on a daily basis. SBC will credit CLEC the Billing and Collection (B&C) fee for billing the Incollects. The B&C credit will be provided in accordance with the procedures set forth in Article XXXVIII of the Agreement and the credit will be \$0.03 per billed message. CLEC and SBC have stipulated that a per message charge for SBC's transmission of Incollect messages to CLEC is applicable, and SBC will bill CLEC for the transmission charge.

Uncollectible charges are defined as Incollect charges billed to CLEC by SBC which are not able to be collected by CLEC from CLEC's end users despite collection efforts by CLEC. This term does not include rejects, unbillables, or adjustments. The definition of uncollectibles should include fraudulent charges to the extent that the fraudulent charges otherwise also meet the criteria of uncollectible.

20. The first paragraph of Sage's proposed language is identical to the language that the state commissions in Michigan and Wisconsin approved for the interconnection agreements between AT&T and SBC. *See In the Matter of the Application of AT&T Communications of Michigan, Inc., and TCG Detroit for Arbitration of Interconnection, Rates, Terms, and Conditions and Related Arrangements with Ameritech Michigan*, Case No. U-12465, Opinion and Order (March 21, 2002), § 27.16.3 of approved agreement; *Application for Approval of the Interconnection Agreement Between AT&T Communications of Wisconsin, LP and Wisconsin Bell, Inc. (d/b/a Ameritech Wisconsin)*, Docket No. 5-TI-656, Order Approving Interconnection Agreement (July 9, 2002), § 27.16.3 of approved agreement. (The only exceptions are the references to the

appropriate billing attachments.) The first paragraph is also identical to the language that SBC and Sage have in their interconnection agreement that was approved by the Texas commission. *See Joint Application of Southwestern Bell Telephone Company and Sage Telecom, Inc. for Approval of Interconnection Agreement*, PUCT Docket No. 23527, Corrected Amended Interconnection Agreement, Att. 10 (Provision of Customer Usage Data), § 8.3 (Feb. 2001). The second paragraph of Sage's proposed language is a definition of uncollectible charges associated with Incollects that was approved by the Texas commission in the context of determining Sage's obligations as a billing and collection agent for Incollects. *See Petition of MCIMetro Access Transmission Services, LLC, Sage Telecom, Inc., Texas UNE-P Coalition, MCLeod USA Telecommunications Services, Inc., and AT&T Communications of Texas, L.P. for Arbitration with Southwestern Bell Telephone Company Under the Telecommunications Act of 1996*, PUCT Docket No. 24542, Revised Arbitration Award at 212 (Oct. 3, 2002) ("Texas Arbitration Award").

21. A plain reading of the first paragraph of Sage's proposed language makes it clear that the CLEC, as the local carrier, is the billing and collection agent with responsibility to bill and to collect for Incollect charges. It further recognizes that the CLEC does not bear responsibility for uncollectible charges. Indeed, the Texas commission reached the same conclusion when it reviewed functionally identical contract language. The Texas commission concluded:

Further, the Arbitrators reach the following conclusions regarding the specific questions posed by the CLECs:

(a) Yes, CLECs should be required to collect SWBT incollect charges for CLEC-customer accepted third-party calls. The express terms of the T2A, as signed by both Sage and MCI WorldCom, indicate that the CLEC accepted this responsibility.

(b) Yes, the CLEC should be considered SWBT's billing agent for purposes of collecting the incollect charges. Existing § 8.3 of Attachment 10 generally describes an arrangement whereby SWBT will provide rated messages and the CLEC will bill the Incollects in return for a billing and collection fee.

(c) No, the CLEC should not be responsible or liable to SWBT for any Incollect charges that are uncollectible. Section 8.3 of Attachment 10 establishes a billing arrangement only. This conclusion is buttressed by the specification in the contract language of compensation for the CLEC at the rate of \$0.05 per billed message. The relatively small amount of compensation paid to the CLEC, while presumably sufficient consideration for billing, defeats the suggestion that CLECs have liability for uncollectible charges.

(d) Uncollectible should be defined to not include rejects, unbillables, or adjustments. "Uncollectible charges are defined as ABT charges billed to CLEC by SWBT which are not able to be collected by CLEC from CLEC's End Users despite collection efforts by CLEC. This term does not include "rejects", "unbillables," or "adjustments." CLEC is obligated to timely return all rejects and unbillables to SWBT to allow SWBT to correct the bill message information and resubmit the charge for billing."

(e) Yes, the definition of "uncollectible" should include fraudulent charges to the extent that the fraudulent charges otherwise also meet the criteria in the above definition of "uncollectible".

Texas Arbitration Award at 212-13. However, Sage's proposed second paragraph for this interconnection agreement will avoid any future disputes with SBC over the proper interpretation of the first paragraph.⁴

22. In contrast to the straightforward language approved (verbatim or in principle) by the Michigan, Wisconsin, and Texas commissions, SBC is proposing its 13-State Alternative Billed Service ("ABS") Appendix. Sage has rejected SBC's ABS Appendix for a number of reasons which Sage has explained to SBC and will enunciate in detail in its testimony on this issue. Notably, the Texas commission did not adopt SBC's ABS

⁴ In Texas, Oklahoma, Missouri, Kansas, Wisconsin, and Michigan, Sage has the first paragraph included in its interconnection agreements with SBC, and its state-specific affiliates. The dispute over the interpretation of the first paragraph was decided in the *Texas Arbitration Award* (as noted above). The dispute is also raised as a post-interconnection dispute in Michigan. See *In the matter of the Complaint of Sage Telecom, Inc. against SBC Michigan for Implementation of Procedures for Incollect Traffic*, Case No. U-13747 (filed March 26, 2003).

Appendix in the *Texas Arbitration*.⁵ The primary problem with SBC's ABS Appendix is that it is based on a premise that is completely unacceptable to Sage. SBC's ABS Appendix is premised on a notion that the CLEC is somehow or in some part financially responsible for SBC's Incollect charges. Sage rejects this premise because Sage's actual role in this scenario is one of a carrier that has one or more customers who have accepted on their own volition a collect call provided by SBC. Sage is willing to be a billing and collection agent and take actions to bill and collect the Incollect charges. Sage is unwilling, however, to accept any financial responsibility for SBC's Incollect charges that are uncollectible (after Sage takes reasonable collection efforts). SBC's ABS Appendix contains three options – each of which would place varying degrees (65 to 100 percent) of financial responsibility on Sage for all Incollect charges, including uncollectible charges. Going back to the example, depending on which option Sage agreed to (which it cannot), SBC's ABS Appendix would require Sage to pay SBC somewhere between 65 and 100 percent of the Incollect charges between Ms. Public and her cousin, irrespective of when or whether Sage was able to collect the Incollect charges. Numerically, Sage would pay SBC between \$19.50 and \$30 for the uncollectible charges, on top of the costs that Sage incurred for billing and attempting to collect the charges, all in exchange for the 3 cent billing and collection fee.⁶ SBC's proposal is unreasonable, which is why no state

⁵ See *Texas Arbitration Award*, Revised Arbitration Award, Joint Contract Matrix, Issue No. 40 at 93-96.

⁶ In fact, the Texas commission viewed the small billing and collection fee (in Texas, SBC pays a 5 cent per message fee) as another basis for determining that Sage should not be financially responsible for uncollectible charges. *Texas Arbitration Award* at 212 (“the CLEC should not be responsible or liable to SWBT for any Incollect charges that are uncollectible. Section 8.3 of Attachment 10 establishes a billing arrangement only. This conclusion is buttressed by the specification in the contract language of compensation for the CLEC at the rate of \$0.05 per billed message. The relatively small amount of

commission (to Sage's knowledge) has approved of SBC's approach or ABS Appendix in a contested arbitration. While in a single example, the amounts may not seem very large, the Incollect charges can constitute a significant liability on a monthly basis and potentially millions of dollars on a yearly basis.

23. Finally, there are two additional disputes on contract language that are directly related to the Incollect dispute. In Article VI, Section 6.3.4.1, SBC proposed including a reference to ABS, arguably to make Sage responsible for Incollects in the case of end user fraud. In response, Sage proposed the following sentence to clarify that Sage was not financially responsible for SBC's ABS traffic: "CLEC will not be liable for Alternatively Billed Service ("ABS")." Sage respectfully urges the Commission to approve Sage's language because, as Sage explains above, it is inequitable to require Sage to make SBC whole when the end user fails to pay SBC for SBC's Incollect services (whether through fraud or otherwise).

In Article VII, Section 7.1.5, SBC proposed the following language:

The Originating Party shall provide to the Terminating Party sufficient information regarding uncollectibles and Customer adjustments. The Terminating Party shall pass through the adjustments to the information provider. Final resolution regarding all disputed adjustments shall be solely between the Originating Party and the information provider.

Sage proposed the addition of the phrase "CLEC will not be liable for uncollectible charges," consistent with its position that the CLEC should not have to reimburse SBC for SBC's uncollectible Incollect charges. Sage respectfully urges the Commission to approve Sage's language for all of the reasons that Sage outlines above.

compensation paid to the CLEC, while presumable sufficient consideration for billing, defeats the suggestion that CLECs have liability for uncollectible charges.”)

24. **SBC's Position:** SBC is proposing its ABS Appendix. In other jurisdictions, SBC has taken the position that the ABS Appendix is appropriate because, in SBC's view, it requires the CLEC to take responsibility for the charges of the CLEC's local customers. For Article VI, Section 6.3.4.1 and Article VII, Section 7.1.15, SBC did not articulate a specific rationale to Sage.

25. **Issue 2: What are the appropriate rates, terms, and conditions for combinations?**

26. **Sage's Position:** Sage's proposed contract language, which is the language that the Michigan commission approved last year in Case No. U-12465, appropriately captures SBC's obligations to perform combinations of UNEs. Due to the length of the language, Sage is attaching the relevant language (Section 9.3) as Exhibit D.

27. SBC, on the other hand, proposed its 13-state Appendix UNE Combining. Not surprisingly, given SBC's history on the issue of combinations, SBC's proposed contract language inappropriately interprets the scope of SBC's obligations to perform combinations.

28. Sage respectfully urges the Commission to approve the contract language approved by the Michigan commission, which appropriately captures the scope of SBC's obligations to perform combinations, rather than SBC's proposed language, which fails to capture its obligations.

29. There are also contract disputes that relate to combinations in Schedule 9.5 and Article IX. Specifically, the parties agreed to contract language for Schedule 9.5, Section 9.5.1.1, with the exception of the bolded language, below, which was proposed by SBC:

Subject to the terms of Article IX, CLEC may order and/or request
Network Elements on an unbundled basis either individually or as

Combinations. "Combinations," as used in this Schedule, shall refer only to Combinations defined in Article IX, Section 9.11 **and Appendix UNE Combining**. Access to UNEs is provided under this ICA over such routs, technologies and facilities as SBC may elect at its own discretion. SBC will provide access to UNEs where technically feasible. Where facilities and equipment are not available, SBC shall not be required to provide UNE. However, CLEC may request an, to the extent required by law, SBC may agree to provide UNEs, through the Bona Fide Request (BFR) Process.

SBC's bolded language limits Sage's rights to combinations to the specific combinations that SBC lists in its Appendix UNE Combining. SBC's proposed Appendix UNE Combining inappropriately interprets the scope of SBC's obligations to perform combinations. Therefore, Sage respectfully urges the Commission to reject SBC's proposed language.

30. SBC also proposed the following paragraph for Article IX, Section 9.2.6:

Charges for migrating of existing telecommunications service(s) to a combination of network Elements are priced at total element long-run incremental cost as set forth in the Pricing Schedule. Charges for the conversion of an end user's existing service to Unbundled Network Elements (including Combinations) shall be as set forth in the Pricing Schedule as per the applicable UNE or UNE Combination. Currently offered UNE combinations are set forth in Table 1 herein. Charges for conversions of combinations not included in Table 1 will be determined as part of the BFR or BFR0OC process, as appropriate.

Sage proposed the following language as a replacement for SBC's proposed language:

When an existing service employed by CLEC is replaced with a combination(s) of Unbundled Network Elements must be physically connected at the time of CLECs request, (including a combination of Network Elements), SBC-AMERITECH will not physically disconnect or separate in any other fashion equipment and facilities employed to provide the service(s) unless requested by CLEC. Charges for such transitioning of an existing service(s) to a combination of Unbundled Network Elements will be the (that are pre-existing or already assembled be non-recurring and recurring charges applicable to the elements included in the combination, and the applicable service order charges as specified in the attached Pricing Schedule) are priced at the total element long-run incremental cost as set forth on the Pricing Schedule.

Sage respectfully urges the Commission to approve Sage's language, as SBC's proposed language inappropriately limits Sage to combinations that SBC lists in its Table 1. Sage's proposed language, on the other hand, accurately captures the scope of SBC's obligations to provide combinations.

31. Finally, SBC proposed the following language for Article IX, Section 9.3.2.1:

Charges for the conversion of an end user's existing service to Unbundled Network Elements (including Combinations) shall be as set forth in the Pricing Schedule as per the applicable UNE or UNE Combinations. Currently offered UNE combinations are set forth in Table 1 of the schedule/amendment/ appendix. Charges for conversions of existing combinations not included in the combination schedule will be determined as part of the BFR or BFR OC process.

Sage proposed the following addition to the language:

Service order charges are the only charges that apply to conversions of existing combinations. Service order charges and the non-recurring charges for the individual UNEs will apply to new combinations.

Sage respectfully requests adoption of its proposed language, as it properly reflects the forward-looking costs that SBC incurs for conversions and new combinations.

32. **SBC's Position:** SBC is proposing its Appendix UNE Combining and the language for Schedule 9.5, Section 9.5.1.1, Article IX, Section 9.2.6, and Article IX, Section 9.3.2.1 that Sage outlines above. SBC did not articulate a specific rationale to Sage.

33. **Issue 3: Should the general "change in law" provisions of the agreement apply to changes in SBC's obligations to perform combinations?**

34. **Sage's Position:** Yes, the general change in law provisions of the agreement, which are found in Article XXIX, Section 29.4, should apply to any change in the parties' legal obligations under the agreement. Sage is proposing the following language for

Article IX, Section 9.1 (fifth and sixth paragraphs), which addresses changes in SBC's obligations to perform combinations:

Upon the effective date of any regulatory, judicial, or legislative action setting forth, eliminating, or otherwise delineating or clarifying the extent of an incumbent LEC's UNE combining obligations, the change in law or intervening law provisions of this agreement will apply.

This language appropriately treats changes in SBC's obligations to perform combinations the same as any other change in a party's legal obligations, by referring to the change in law provisions of the agreement.

35. SBC, on the other hand, is proposing contract language for the fifth and sixth paragraphs of Article IX, Section 9.1 that singles out changes in its obligations to perform combinations by bypassing the change in law provisions of the agreement:

Upon the effective date of any regulatory, judicial, or legislative action setting forth, eliminating, or otherwise delineating or clarifying the extent of an incumbent LEC's UNE combining obligations, SBC-13STATE shall be immediately relieved of any obligation to perform any non-included combining functions or other actions under this Agreement or otherwise, and CLEC shall thereafter be solely responsible for any such non-included functions or other actions. This Section 3.3.2.2 shall apply in accordance with its terms, regardless of any "change of law" or "intervening law" or similarly purposed or other provision of the Agreement and, concomitantly, the first sentence of this Section 3.3.2.2 shall not affect the applicability of any such provisions in situations not covered by the first sentence.

Without affecting the application of the above (which shall apply in accordance with its provisions), upon notice by SBC-13STATE, the parties shall engage in good faith negotiations to amend the Agreement to set forth and delineate those functions or other actions that go beyond the ILEC obligation to perform the functions necessary to combine UNEs and combine UNEs with elements possessed by a requesting telecommunications carrier, and to eliminate any SBC-13STATE obligation to perform such functions or other actions. If those negotiations do not reach a mutually agreed-to amendment within sixty (60) days after the date of any such notice, the remaining disputes between the parties regarding those functions and other actions that go beyond those functions necessary to combine UNEs and combine UNEs with elements possessed by a requesting telecommunications carrier, shall be resolved pursuant to

the dispute resolution process provided for in this Agreement. Such a notice can be given at any time, and from time to time.

Sage respectfully urges the Commission to reject SBC's proposed contract language, as it unreasonably singles out changes to SBC's obligations to perform combinations for preferential treatment. As best Sage can tell, the only rationale for SBC's proposed language is that SBC desires rapid implementation of any changes to its combination obligations. If the change in law provisions are appropriate for other changes in legal obligations (which they are), then they are appropriate for changes in SBC's combination obligations.

36. **SBC's Position:** SBC is proposing the language that Sage outlines above for the fifth and sixth paragraph of Article IX, Section 9.1. SBC did not articulate a specific rationale to Sage.

37. **Issue 4: Should the general "change in law" provisions of the agreement apply to changes in the Appendix Performance Measurements?**

38. **Sage's Position:** Yes, for all of the reasons that Sage discusses above for Issue 3. SBC proposed the following contract language for Appendix Performance Measurements, Section 2.1:

In the event that any of the provisions of this Appendix, or any of the laws, regulations or Commission orders that were the basis or rationale for such provision in this Appendix, are invalidated, modified, or stayed by any action of any state or federal regulatory or legislative body, or court of competent jurisdiction, the Appendix or affected provision shall be immediately invalidated, modified, clarified, or stayed as required to effectuate the subject order upon written request of either Party. The Parties shall then immediately begin negotiations to amend the Appendix with appropriate conforming language. AM-IL also specifically reserves the right to seek recovery of payments made pursuant to this Appendix, consistent with any action of such regulatory or legislative body or court.

Sage proposed the following additions, shown in bold:

In the event that any of the provisions of this Appendix, or any of the laws, regulations or Commission orders that were the basis or rationale for such provision of this Appendix, are invalidated, modified, or stayed by any action of any state or federal regulatory or legislative body, or court or competent jurisdiction, the Appendix or affected provisions shall be immediately invalidated, modified, clarified, or stayed as required to effectuate the subject order upon written request of either Party **and in conformance with the change in law provisions of this agreement**. The Parties shall then immediately begin negotiations to amend the Appendix with appropriate conforming language. AM-IL also specifically reserves the right to seek recovery of payments made pursuant to this Appendix, consistent with any action of such regulatory or legislative body or court. **CLEC reserves all rights to contest AM-IL's attempts to seek recovery of these payments.**

39. As with Issue 3, SBC is attempting to obtain preferential treatment for changes in its obligations to measure its performance and pay remedies for failure to meet the performance objectives. All other changes in the parties' obligations are addressed through the change in law provisions of Article XXIX, Section 29.4. There is no reasonable policy justification for singling out SBC's performance measurement obligations for special treatment.

40. Sage proposes the phrase "CLEC reserves all rights to contest AM-IL's attempts to seek recovery of these payments" to clarify that Sage reserves the right to contest SBC's interpretation of the alleged change in law. Sage respectfully urges the Commission to approve Sage's language, as it reasonably reserves Sage's rights to challenge what may be an erroneous interpretation by SBC of an alleged change in law.

41. **SBC's Position:** SBC is proposing the language that Sage outlines above for Appendix Performance Measurements, Section 2.1. SBC did not articulate a specific rationale to Sage.

42. **Issue 5: Should Enhanced Extended Links ("EELs") be classified as new combinations and subject to network restrictions beyond applicable state and federal decisions?**

43. **Sage's Position:** No. Sage respectfully urges the Commission to reject SBC's proposed language that classifies all EELs as new combinations and restricts access to EELs beyond any restrictions outlined in applicable state and federal decisions. SBC proposed the following contract language for Schedule 9.2.1, Section 9.2.1.4:

A New Enhanced Extended Loop (New EEL) is a new combination of UNEs consisting of certain Unbundled Local Loops together with certain Unbundled Dedicated Transport (UDT), using the appropriate cross-connects and, when needed, multiplexing between the Unbundled Loop and UDT in a particular EEL. The New EEL consists of an Unbundled Local Loop (joining a telecommunications carrier's end user's premises and SBC-Michigan's central office serving that end user where the telecommunications carrier is not physically collocated) connected to Unbundled Dedicated Transport (joining SBC-Michigan's central office serving that end user to a telecommunications carrier's collocation arrangement in a different SBC-Michigan central office in the same LATA.) EELs may be provided under this Agreement only in accordance with all pertinent Commission and FCC orders (such as the final ruling on the Triennial Review), including the Supplemental Order and Supplemental Order Clarification referenced in Section 9.2.1.3.6, above.

SBC's proposed language classifies all EELs as new combinations. SBC's language is inappropriate because SBC has existing loop and transport combinations in its network, either as existing EELs or special access circuits. Those EELs would be existing combinations and thus subject to the pricing and other legal provisions that are applicable to existing combinations. SBC's language also includes several network descriptions that arguably restrict a CLEC's access to EELs in a manner that is more restrictive than any applicable state and federal decisions.

44. Accordingly, and given the uncertainty created by the impending order from the Federal Communications Commission ("FCC") in the Triennial Review, Sage respectfully proposes the following contract language for Schedule 9.2.1, Section 9.2.1.4:

EELs will be provided under this Agreement in accordance with all pertinent Commission and FCC orders, including the Supplemental Order and Order Clarifying Supplemental Order referenced in 9.2.1.3.6, above.

45. **SBC's Position:** SBC is proposing the language that Sage outlines above for Schedule 9.2.1, Section 9.2.1.4. SBC did not articulate a specific rationale to Sage.

46. **Issue 6: Can SBC apply charges for trunk rearrangements beyond the forward-looking charges necessary to perform the trunk rearrangements?**

47. **Sage's Position:** No, the charges should be limited to the forward-looking charges incurred by SBC.

48. As a preliminary matter, this issue may be resolved by the Commission in an upcoming arbitration between AT&T and SBC. For the applicable section, Schedule 9.2.6, Section 9.2.6.1.7.1, Sage proposed the language that currently exists in the Michigan interconnection agreement between AT&T and SBC:

Where physical trunking rearrangement work is performed in the process of establishing custom routing groups for migrating Operator and DA services to CLEC, SBC-AMERITECH shall apply only those charges necessary to recover the forward-looking economic costs of performing the trunk rearrangements.

SBC, on the other hand, proposed the language that it proposed in the arbitration between AT&T and SBC that is currently before this Commission:

Where physical trunking rearrangement work is performed in the process of establishing custom routing groups for migrating Operator and DA services to CLEC, SBC-AMERITECH shall charge for performing the trunk rearrangements. Additional charges may be applicable for SBC to recover its costs in providing the customized routing for AT&T, e.g., performing translation work and building routing tables specific to

AT&T's request. Charges under this Section shall be calculated pursuant to 252(d)(1).

Sage expects that the Commission will make a decision on this issue in the arbitration between SBC and AT&T. For judicial economy, it would make sense to apply that decision to this arbitration.

49. On the merits of the issue, SBC's proposed language is inappropriate because it arguably allows SBC to double-recover customized routing costs that are recovered in other charges.

50. **SBC's Position:** SBC is proposing the language that Sage outlines above for Schedule 9.2.6, Section 9.2.6.1.7.1. SBC stated that its proposed language was the same language that it is proposing in the arbitration before the Commission between AT&T and SBC.

51. **Issue 7: Can SBC assess branding charges on Sage before those charges are approved by the Commission?**

52. **Sage's Position:** No. SBC cannot assess branding charges on Sage prior to approval of the charges by the Commission. SBC proposed three paragraphs that contain charges that Sage must pay for OS/DA branding. For Schedule 9.2.9, Section 9.2.9.2.2.3.1, SBC proposed the following language:

An initial non-recurring charge applies per brand, per Operator Assistance Switch, per trunk group for the establishment of AT&T specific branding. In addition, a per call charge applies for every DA call handled by SBC-AMERITECH on behalf of AT&T when such services are provided in conjunction with the purchase of SBC-AMERITECH unbundled local switching. An additional non-recurring charge applies per brand, per Operator assistance switch, per trunk group for each subsequent change to the branding announcement. If OS and DA branding are loaded at the same time, one initial charge applies to both.

For Schedule 9.2.9, Section 9.2.9.1.5.2.1, SBC proposed the following language:

SBC-AMERITECH - An initial non-recurring charge applies per brand, per Operator Assistance Switch, per trunk group for the establishment of AT&T specific branding. In addition, a per call charge applies for every OS call handled by SBC-AMERITECH on behalf of AT&T when such services are provided in conjunction with the purchase of SBC-AMERITECH unbundled local switching. An additional non-recurring charge applies per brand, per Operator assistance switch, per trunk group for each subsequent change to the branding announcement.

For Schedule 9.2.9, Section 9.2.9.7.1.1.4.1, SBC proposed the following contract language:

An initial non-recurring charge applies per brand, per Operator Assistance Switch, per trunk group for the establishment of CLEC specific branding. In addition, a per call charge applies for every OS call handled by SBC-AMERITECH on behalf of CLEC when such services are provided in conjunction with the purchase of SBC-AMERITECH unbundled local switching. An additional non-recurring charge applies per brand, per Operator assistance switch, per trunk group for each subsequent change to the branding announcement.

Consistent with the contract language in the agreement between AT&T and SBC in Michigan, Sage proposed the following addition to all three paragraphs:

CLEC shall be required to pay these charges when and if they are approved by the Commission. Neither Party waives its right to argue for or against a true-up of such rates and reserves the right to so do.

Unless SBC can point to a specific decision by the Commission approving SBC's proposed charges (SBC has not done so to date), Sage's language is appropriate because SBC should not be allowed to assess a charge without prior Commission approval.

53. **SBC's Position:** SBC is proposing the language that Sage outlines above for Schedule 9.2.9, Sections 9.2.9.2.2.3.1, 9.2.9.1.5.2.1, and 9.2.9.7.1.1.4.1. SBC objected to Sage's proposed language on the grounds that it was arbitrated language from Michigan.

54. **Issue 8:** **Is Sage required to disclose to SBC the retail service that Sage intends to use with an existing combination, or detailed technical information about the existing combination, in order to receive continued access to an existing**

combination of UNEs that SBC previously provided through the Bona Fide Request ("BFR") process?

55. **Sage's Position:** No, because it is unreasonable to require this level of detailed information when SBC is already providing the combination of UNEs. SBC proposed the following contract language for Schedule 9.5, Section 9.5.1.2.:

A telecommunications carrier who submits a request for any additional Combination provided previously hereunder by SBC-Ameritech pursuant to the Bona Fide Request process shall provide:

- (a) a technical description of each requested feature, capability, functionality or unbundled network element requested including specifications of what UNEs the telecommunications carrier requests the Company to combine, or (b) a service provided by the Company that the telecommunications carrier wishes to provide through an ordinarily combined combination of UNEs. This includes retail services provided by the Company that may be requested, on a UNE basis.

This language is unreasonable because it requires Sage to provide a detailed technical description of the combination of UNEs, or a description of Sage's proposed retail service, even though SBC is *currently* providing the combination. If SBC is already providing the combination, Sage should be able to order the combination using the standard ordering processes for UNEs and combinations of UNEs. Therefore, Sage respectfully urges the Commission to reject SBC's proposed language for Schedule 9.5, Section 9.5.1.2.

56. **SBC's Position:** SBC is proposing the language that Sage outlines above for Schedule 9.2.1, Section 9.2.1.4. SBC did not articulate a specific rationale to Sage, beyond pointing to SBC's Appendix UNE Combining.

57. **Issue 9: Should the reciprocal compensation attachment contain internally consistent terms?**

58. **Sage's Position:** Yes. At the end of the negotiations between the parties, Sage was waiting for clarification from SBC on an issue related to the reciprocal compensation attachment. Sage is hopeful that the parties can resolve this open issue prior to the hearing. However, to preserve its legal rights, Sage presents a specific recommendation.

59. Specifically, the open issue is in Section 4.10.4(a) of the Reciprocal Compensation Amendment. SBC proposed the following language:

Reciprocal compensation applies to transport and termination of Local Calls, as defined in Schedule 1.2.

However, Schedule 1.2 does not provide a definition for the term "Local Calls."

Schedule 1.2 does contain a definition for "Local Traffic," stating:

"Local Traffic" means those calls as defined by Ameritech's local calling area as described in maps, tariffs, or rule schedules filed with and approved by the Commission as of the effective date. This definition is inclusive of calls bound for Enhanced Service Providers.

In the absence of an agreement between the parties on the proper reference, Sage proposes use of the term "Local Traffic" rather than the undefined term "Local Calls."

60. **SBC's Position:** SBC proposed the language for Section 4.10.4(a) of the Reciprocal Compensation Amendment that Sage outlines above. SBC was still reviewing this issue at the end of the negotiations.

61. **Issue 10: Should the Merger Conditions Pricing Template clarify that the rates in the template apply for the duration of the contract?**

62. **Sage's Position:** Yes. This is another issue that Sage was waiting for clarification on at the end of the negotiations. Sage is hopeful that SBC will confirm in writing that the rates in the template apply for the duration of the contract. In the absence of such confirmation, Sage proposes the following sentence at the end of the template: "These rates apply for the duration of the contract."

63. **SBC's Position:** SBC was still reviewing this issue at the end of the negotiations.

64. **Issue 11:** Should the pricing appendix specify that "as is" conversions are only subject to a service order charge?

65. **Sage's Position:** Yes. This is another issue that Sage was waiting for clarification on at the end of the negotiations. SBC proposed the following contract language for Section 3.3 of Appendix Pricing: "Consistent with FCC Rule 51.307(d), there may be non-recurring charges for each UNE." Sage is hopeful that SBC will confirm in writing that "as is" conversions would only incur a service order charge.

66. In the absence of such confirmation, Sage proposes the following sentence at the end of SBC's proposed sentence: ""As is" conversions only incur a service order charge, as outlined elsewhere in the Agreement." Sage's language is appropriate because SBC does not incur any physical work to process an "as is" conversion, beyond the activities for processing the service order that are captured in the service order charge.

67. **SBC's Position:** SBC proposed the language for Section 3.3 of Appendix Pricing that Sage outlines above. SBC was still reviewing this issue at the end of the negotiations.

68. **Issue 12:** Should the contract contain language that addresses the resolution of errors for listings in SBC's OS/DA databases?

69. **Sage's Position:** Yes. Sage proposed the following contract language:

Schedule 9.2.9, Section 9.2.9.8

Ameritech may from time to time contact CLEC regarding what appears to be an obvious or potential grammatical or spelling error with an individual CLEC end user listing in the Ameritech Operator Services and Directory Assistance (DA) database. Such errors could include for example an extra letter in a person's name such as Williams, or the substitution of a suffix for a person's last name, such as Alvin Senior, instead of Alvin Williams, Sr., among other obvious errors. CLEC agrees

that AMERITECH may temporarily change the end user listing in the DA database, until the CLEC submits a service order to correct the listing.

Schedule 9.2.9, Section 9.2.9.8.1

CLEC agrees to submit a service order to correct the directory listing, which will ultimately correct the end user listing in the DA database or advise AMERITECH that the listing is correct. If the CLEC fails to submit a change within 30 days of notification, AMERITECH will remove the temporary listing from the DA database and the listing will remain as is. AMERITECH will follow up with CLEC once within the thirty-day period, if no service order has been issued prior to removing the temporary change.

Schedule 9.2.9, Section 9.2.9.8.2

CLEC agrees AMERITECH has no obligation to verify a DA listing and assumes no responsibility to identify errors. AMERITECH will not search for DA listing errors, nor provide for verification of DA listings. CLEC further agrees AMERITECH has no liability to CLEC in identifying errors in the DA database or notifying CLEC of errors. CLEC further agrees that AMERITECH shall have no liability for temporarily correcting what appears to be an obvious or potential grammatical or spelling error. CLEC further agrees to indemnify, defend, and hold AMERITECH harmless from any and all third party claims arising from AMERITECH temporarily correcting an obvious or potential error, and/or CLEC's failure to submit a correcting service order, except where AMERITECH acted with gross negligence or willful misconduct.

70. This language is appropriate because it allows, but does not require, SBC to correct obvious typographical errors in OS/DA listings. Such corrections benefit end users, who obviously prefer to have correct OS/DA listings. SBC was still considering this language at the end of negotiations and has agreed to this language in other states. Sage is hopeful that the parties will reach resolution on this issue before the hearing, but lists its proposed contract language in this petition to preserve its legal rights.

71. **SBC's Position:** SBC was still reviewing this issue at the end of the negotiations.

72. **Issue 13:** Should SBC be held responsible for intentional, deliberate, or willful invasion of privacy or infringement of confidentiality associated with SBC's offer of OS/DA?

73. **Sage's Position:** Yes. SBC proposed the following contract language for Schedule 9.2.9, Section 9.2.9.6.2:

[CLEC] also agrees to release, defend, indemnify, and hold harmless SBC-AMERITECH from any claim, demand or suit that asserts any infringement or invasion of privacy or confidentiality of any person or persons caused or claimed to be caused, directly, or indirectly, by SBC-AMERITECH employees and equipment associated with provision of the OS and DA Services, including but is not limited to suits arising from disclosure of the telephone number, address, or name associated with the telephone called or the telephone used to call Operator Services and Directory Assistance.

Sage proposed the following sentence for the end of SBC's proposed paragraph: "This will apply so long as the actions by SBC-Ameritech or its employees were not willful, intentional or deliberate."

74. SBC was still considering Sage's proposed sentence at the end of the negotiations. Sage is hopeful that SBC will agree to the language. However, in the absence of agreement, Sage respectfully urges the Commission to approve Sage's proposed language as it is unsound public policy to excuse SBC from liability for willful, intentional, or deliberate invasions of privacy or infringements of confidentiality. Indeed, Sage's proposed contract language is consistent with language commonly found in many tariffs, which typically maintain liability for willful, intentional, or deliberate acts.

75. **SBC's Position:** SBC was still reviewing Sage's language at the end of the negotiations.

76. **Issue 14: Is it appropriate for SBC to credit Sage for trouble isolation costs charged to Sage if the parties ultimately discover that the trouble resided on SBC's network?**

77. **Sage's Position.** Yes. Sage proposed the following contract language:

Article IX, Section 9.15.8

In response to a trouble ticket by CLEC where AMERITECH-ILLINOIS determines in error that the trouble is in CLEC's network or CLEC's end users equipment or communications systems, and CLEC subsequently finds the trouble resides in AMERITECH-ILLINOIS network, CLEC will be credited for all AMERITECH-ILLINOIS trouble isolation costs of the original trouble ticket, and if deemed necessary, subsequent trouble tickets warranted to the same case of trouble. In addition, CLEC may charge AMERITECH-ILLINOIS after closing the trouble ticket, a charge for trouble isolation, at a rate not to exceed the tariffed amount that AMERITECH-ILLINOIS could charge CLEC under AMERITECH-ILLINOIS' tariff for the same service, provided that CLEC's time for trouble isolation must be reasonable in relation to work actually performed, and further provided that AMERITECH-ILLINOIS may pay such charges to CLEC by means of an identifiable credit on CLEC's account.

Schedule 9.2.2, Section 9.2.2.14.8

If the CLEC opens a trouble ticket for the HFPL portion of the loop to AMERITECH-ILLINOIS and the problem is determined to be in the CLEC's network, the CLEC will pay AMERITECH-ILLINOIS the applicable effective tariffed rate for trouble isolation, maintenance, and repair (as specified in Section 9.2.2.14 above) upon closing the trouble ticket. In response to a trouble ticket initiated by CLEC where AMERITECH-ILLINOIS determines in error that the trouble is in CLEC's network, and CLEC subsequently finds the trouble resides in AMERITECH-ILLINOIS network, CLEC will be credited for all AMERITECH-ILLINOIS trouble isolation costs on the original trouble ticket, and, if deemed necessary, subsequent trouble tickets warranted to the same case of trouble. In addition, CLEC may charge AMERITECH-ILLINOIS after closing the trouble ticket, a charge for trouble isolation, at a rate not to exceed the tariffed amount that AMERITECH-ILLINOIS could charge CLEC under AMERITECH-ILLINOIS' tariff for the same service, provided that CLEC's time for trouble isolation must be reasonable in relation to the work actually performed, and further provided that AMERITECH-ILLINOIS may pay such charges to CLEC by means of an identifiable credit on CLEC's account. If either Party disagrees with

the applicable charge assessed, the determination of the appropriate charge will be subject to the dispute resolution provisions of this Agreement.

Sage's language is appropriate because it reasonably reimburses Sage for trouble isolation costs that Sage incurs when SBC initially determines that trouble resided on Sage's network, but ultimately determines that the trouble resided on SBC's network. Furthermore, Sage's language is reasonable because SBC agreed to this language with TDS Metrocom, Inc.. *See Joint Petition for Approval of Third Amendment to Interconnection Agreement between Illinois Bell Telephone Company (SBC Illinois) and TDS Metrocom, Inc.*, Docket No. 03-0233, Joint Petition (April 10, 2003) (requesting approval of language in question).

78. **SBC's Position:** SBC was still reviewing Sage's language at the end of the negotiations.

79. **Issue 15: Should SBC provide access to unbundled local switching with unbundled shared transport for local and intraLATA traffic?**

80. **Sage's Position:** Yes. Indeed, the FCC recently confirmed that SBC is required to provide this access to CLECs. *See In the Matter of CoreComm Communications, Inc., and Z-Tel Communications, Inc., Complainants, v. SBC Communications Inc., Southwestern Bell Telephone Company, Pacific Bell Telephone Company, Nevada Bell Telephone Company, The Southern New England Telephone Company, Illinois Bell Telephone Company, Indiana Bell Telephone Company, Michigan Bell Telephone Company, The Ohio Bell Telephone Company, and Wisconsin Bell, Inc., Defendants*, Memorandum Opinion and Order, File No. EB-01-MD-017, (rel. April 17, 2003). Sage proposed the following contract language, which is substantially similar to the contract language that SBC is negotiating with Vartech:

Article IX, Section 9.4.5

Access to IntraLATA Transmission Capabilities

9.4.5.1 SBC Ameritech Illinois shall provide CLEC access on an unbundled basis to the intraLATA interexchange transmission capabilities of SBC Ameritech Illinois' existing network as and to the extent required by FCC rules and orders, including the Forfeiture Order ("IntraLATA Transmission Capabilities"). As used herein, "IntraLATA Transmission Capabilities" includes the L-PIC Ability as defined in paragraph 9.4.2.

9.4.5.2 In conjunction with CLEC's purchase of an unbundled local circuit switching (ULS) port with unbundled shared transport from SBC Ameritech Illinois under the Agreement and as and to the extent required by FCC rules and orders (including the Forfeiture Order), SBC Ameritech Illinois shall specifically make available, upon a ULS port-specific request, the ability to route over SBC Ameritech Illinois' existing network "1+" intraLATA calls originating from the ULS port ("L-PIC Ability"). The L-PIC Ability will be provided from SBC Ameritech Illinois' originating end-office where the ULS port is being provided, and consists of use of SBC-Ameritech Illinois' existing intraLATA interexchange transmission facilities using the same routing tables and network facilities, including interexchange trunk groups and tandem switching, as intraLATA toll calls originated from the same end-office by SBC Ameritech Illinois' retail end user customers for whom SBC Ameritech Illinois is the presubscribed intraLATA toll carrier. The L-PIC Ability shall be made available through the use of CLEC of SBC Ameritech Illinois' routing code or, if the means exists and are enabled by SBC Ameritech Illinois to use CLEC's Carrier Identification Code (CIC) instead of SBC Ameritech Illinois' code, then using CLEC's CIC.

9.4.5.3 In addition to other applicable charges, including charges for the ULS port and usage records, the rates applicable to unbundled shared transport shall also apply to the use of the L-PIC Ability. The blended transport usage-sensitive rate applies to calls originating from a ULS port and will apply in addition to ULS usage-sensitive rates, if any. The blended transport rate accounts for portions of SBC Ameritech Illinois' network used to transport calls and encompasses use of the network including non-conversation time, and accounts for both tandem- and direct-routed traffic. Any other use of the IntraLATA Transmission Capabilities shall be requested, and associated terms, conditions, and rates established, through the bona fide request process (or its similar counterpart) set forth in the Agreement, unless such use is otherwise already provided for in this Agreement.

9.4.5.4 CLEC has the sole responsibility for entering into arrangements with terminating carriers for traffic originated by CLEC's

customers, including those carried on the IntraLATA Transmission Capabilities. CLEC must indemnify and defend SBC Ameritech Illinois against any claims and/or damages that may result from the transmission of such traffic of any other carriers.

9.4.5.5 CLEC is and will remain solely liable and responsible for any terminating compensation charges applicable to traffic originating with such ULS ports, including the traffic carried by the IntraLATA Transmission Capabilities, including such charges that are payable to third party carriers and SBC Ameritech Illinois for the termination of such traffic to their respective end-users, as applicable. The foregoing provisions of this Paragraph 9.4.5.5 shall not prejudice or otherwise affect any position that either Party may take on the application of terminating access charges in any subsequent negotiation, arbitration, or otherwise.

9.4.5.6 SBC Ameritech Illinois' offer of IntraLATA Transmission Capabilities, is not, and shall not in any way be construed to be, an admission by SBC Ameritech Illinois or any of its affiliates that any one of them has acted wrongfully and/or unlawfully in any manner. SBC Ameritech Illinois' offer of IntraLATA Transmission Capabilities shall not be construed in any proceeding as a present or past admission of liability; shall not in any way be used as proof or evidence in any proceeding on whether SBC Ameritech Illinois previously was required by law to provide such Capabilities; and shall not be used as proof or evidence that SBC Ameritech Illinois should be required under the Agreement, or otherwise to continue to provide unbundled local circuit switching, unbundled shared transport, or such Capabilities.

SBC was still considering Sage's proposed contract language at the end of the negotiations. Sage is hopeful that SBC will agree to the language. However, in the absence of agreement, Sage respectfully urges the Commission to approve Sage's proposed language as it incorporates SBC's obligations under its merger conditions.

81. **SBC's Position:** SBC was still reviewing Sage's language at the end of the negotiations.

82. **Issue 16:** Should the contract contain language that outlines a process for migrating from OS/DA ordered through SBC's tariff to OS/DA ordered through the contract?

83. **Sage's Position:** No, because the language is unnecessary as between Sage and SBC. SBC proposed the following language for Article IX, Section 9.2.7.9 and Schedule 9.2.9, Section 9.2.9 (third paragraph):

In the event SBC Illinois lawfully ceases to make OS/DA available as UNEs pursuant to tariff during the term of this Agreement but SBC Illinois remains obligated by the Illinois Commerce Commission to make OS/DA available as UNEs pursuant to interconnection agreements, the parties shall treat this occurrence as a Change in Law event under Section 29.3 of this Agreement and negotiate an appropriate amendment within 60 days. If AT&T is purchasing OS and DA as UNEs from an SBC Illinois tariff at the time SBC lawfully ceases to make OS/DA available as UNEs pursuant to tariff during the term of this Agreement yet remains obligated to provide OS and DA as UNEs at Commission-approved TELRIC rates, SBC shall continue to provide OS and DA to AT&T as UNEs at Commission-approved rates, terms and conditions until such time as the Illinois Commerce Commission approves the parties' amendment and such amendment becomes effective.

Sage proposed deleting the language, as it is specific to the relationship between AT&T and SBC. SBC is considering Sage's proposal and Sage is hopeful that the parties will settle the issue. However, to preserve its legal rights, Sage is outlining its position in this Petition.

84. **SBC's Position:** SBC was still reviewing Sage's language at the end of the negotiations.

85. For the foregoing reasons, Sage respectfully requests adoption of its positions as outlined in this Petition.

Respectfully submitted,

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**STATE OF ILLINOIS
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Sage Telecom, Inc.

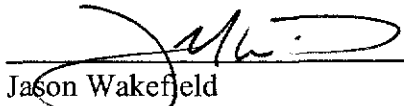
**Petition for Arbitration of an
Interconnection Agreement with
Illinois Bell Telephone Company d/b/a
SBC Illinois under Section 252(b) of the
Telecommunications Act of 1996**

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ICC Docket No. _____

**SAGE TELECOM, INC.'S
VERIFICATION**

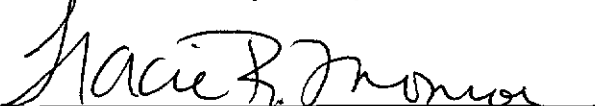
I, Jason Wakefield, being first duly sworn, depose and state that I am an attorney for Sage Telecom, Inc., that I have read the foregoing Petition for Arbitration of Sage Telecom, Inc. and know the contents thereof and that the statements therein contained are true, to the best of my knowledge information and belief.



Jason Wakefield

SUBSCRIBED AND SWORN to before me this 8th day of May, 2003.





Notary Public for the State of Texas

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

Sage Telecom, Inc.	§	
	§	
Petition for Arbitration of an	§	
Interconnection Agreement with	§	ICC Docket No. _____
Illinois Bell Telephone Company d/b/a	§	
SBC Illinois under Section 252(b) of the	§	
Telecommunications Act of 1996	§	

TO: Attached Service List

NOTICE OF FILING

Please take notice that on May 9, 2003, the undersigned filed **Sage Telecom, Inc.'s Petition for Arbitration** with the Clerk of the Illinois Commerce Commission.

Jason Wakefield, an attorney
for Sage Telecom, Inc.

CERTIFICATE OF SERVICE

I, Jason M. Wakefield, an attorney, on oath state that I served this **Notice of Filing and Sage Telecom, Inc.'s Petition for Arbitration** to each person on the attached Service List, via electronic mail and by deposit in the U.S. Mail with proper postage prepaid on this the 8th day of May, 2003.

Jason Wakefield

Jason Wakefield
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